

AMENDED IN ASSEMBLY MARCH 29, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2267

Introduced by Assembly Member Huff
(Coauthors: Assembly Members Benoit, Cogdill, DeVore, Maze,
Mountjoy, Spitzer, Strickland, and Villines)
(Coauthor: Senator Dutton)

February 22, 2006

An act to amend Sections *13050*, 13100, 13101, 13151, 13152, ~~and 13200~~ *13200*, *13600*, *13601*, and *13602* of the Probate Code, relating to decedent's estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 2267, as amended, Huff. Decedent's estates.

Existing law establishes simplified procedures for dealing with a decedent's estate valued under \$100,000, including authorizing the successor of the decedent to collect property due to the decedent without letters of administration or awaiting probate of a will. *Existing law excludes certain property from the determination of the value of the estate, including salary or other compensation owed to the decedent, not to exceed \$5,000.* Existing law permits a court, pursuant to a petition, to determine succession to property in an estate valued under \$100,000, as specified. Existing law establishes an affidavit procedure by which a person may be designated as a successor to a decedent to a particular item of real property valued at no more than \$20,000. *Existing law establishes an affidavit procedure by which a surviving spouse may collect salary or other compensation owed the deceased spouse when the amount does not exceed \$5,000, as*

specified. Existing law permits this amount to be adjusted to reflect increases in the cost of living.

This bill would increase the amount of salary or other compensation to be excluded from the determination of the value of the estate from \$5,000 to \$15,000. The bill would also increase the values in the transfer provisions described above from \$100,000 to \$200,000—~~and from~~ for an estate, from \$20,000 to ~~\$40,000~~ \$100,000 for real property, and from \$5,000 to \$15,000 for salary or compensation. The bill would delete provisions permitting the adjustment of the salary or other compensation values in connection with increases in the cost of living.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13050 of the Probate Code is amended
2 to read:

3 13050. (a) For the purposes of this part:

4 (1) Any property or interest or lien thereon which, at the time
5 of the decedent's death, was held by the decedent as a joint
6 tenant, or in which the decedent had a life or other interest
7 terminable upon the decedent's death, or which was held by the
8 decedent and passed to the decedent's surviving spouse pursuant
9 to Section 13500, shall be excluded in determining the property
10 or estate of the decedent or its value. This excluded property
11 shall include, but not be limited to, property in a trust revocable
12 by the decedent during his or her lifetime.

13 (2) A multiple-party account to which the decedent was a
14 party at the time of the decedent's death shall be excluded in
15 determining the property or estate of the decedent or its value,
16 whether or not all or a portion of the sums on deposit are
17 community property, to the extent that the sums on deposit
18 belong after the death of the decedent to a surviving party,
19 P.O.D. payee, or beneficiary. For the purposes of this paragraph,
20 the terms "multiple-party account," "party," "P.O.D. payee," and
21 "beneficiary" are defined in Article 2 (commencing with Section
22 5120) of Chapter 1 of Part 2 of Division 5.

(b) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, truck camper, or floating home registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) For the purposes of this part, the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the Armed Forces of the United States.

(2) The amount, not exceeding ~~five~~ *fifteen* thousand dollars (~~\$5,000~~) (\$15,000), of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

~~SECTION 1.~~

SEC. 2. Section 13100 of the Probate Code is amended to read:

13100. Excluding the property described in Section 13050, if the gross value of the decedent's real and personal property in this state does not exceed two hundred thousand dollars (\$200,000) and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

(a) Collect any particular item of property that is money due the decedent.

(b) Receive any particular item of property that is tangible personal property of the decedent.

(c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

1 ~~SEC. 2.~~

2 SEC. 3. Section 13101 of the Probate Code is amended to
3 read:

4 13101. (a) To collect money, receive tangible personal
5 property, or have evidences of a debt, obligation, interest, right,
6 security, or chose in action transferred under this chapter, an
7 affidavit or a declaration under penalty of perjury under the laws
8 of this state shall be furnished to the holder of the decedent's
9 property stating all of the following:

10 (1) The decedent's name.

11 (2) The date and place of the decedent's death.

12 (3) "At least 40 days have elapsed since the death of the
13 decedent, as shown in a certified copy of the decedent's death
14 certificate attached to this affidavit or declaration."

15 (4) Either of the following, as appropriate:

16 (A) "No proceeding is now being or has been conducted in
17 California for administration of the decedent's estate."

18 (B) "The decedent's personal representative has consented in
19 writing to the payment, transfer, or delivery to the affiant or
20 declarant of the property described in the affidavit or
21 declaration."

22 (5) "The current gross fair market value of the decedent's real
23 and personal property in California, excluding the property
24 described in Section 13050 of the California Probate Code, does
25 not exceed two hundred thousand dollars (\$200,000)."

26 (6) A description of the property of the decedent that is to be
27 paid, transferred, or delivered to the affiant or declarant.

28 (7) The name of the successor of the decedent (as defined in
29 Section 13006 of the California Probate Code) to the described
30 property.

31 (8) Either of the following, as appropriate:

32 (A) "The affiant or declarant is the successor of the decedent
33 (as defined in Section 13006 of the California Probate Code) to
34 the decedent's interest in the described property."

35 (B) "The affiant or declarant is authorized under Section
36 13051 of the California Probate Code to act on behalf of the
37 successor of the decedent (as defined in Section 13006 of the
38 California Probate Code) with respect to the decedent's interest
39 in the described property."

1 (9) “No other person has a superior right to the interest of the
2 decedent in the described property.”

3 (10) “The affiant or declarant requests that the described
4 property be paid, delivered, or transferred to the affiant or
5 declarant.”

6 (11) “The affiant or declarant affirms or declares under
7 penalty of perjury under the laws of the State of California that
8 the foregoing is true and correct.”

9 (b) Where more than one person executes the affidavit or
10 declaration under this section, the statements required by
11 subdivision (a) shall be modified as appropriate to reflect that
12 fact.

13 (c) If the particular item of property to be transferred under
14 this chapter is a debt or other obligation secured by a lien on real
15 property and the instrument creating the lien has been recorded in
16 the office of the county recorder of the county where the real
17 property is located, the affidavit or declaration shall satisfy the
18 requirements both of this section and of Section 13106.5.

19 (d) A certified copy of the decedent’s death certificate shall be
20 attached to the affidavit or declaration.

21 (e) If the decedent’s personal representative has consented to
22 the payment, transfer, or delivery of the described property to the
23 affiant or declarant, a copy of the consent and of the personal
24 representative’s letters shall be attached to the affidavit or
25 declaration.

26 ~~SEC. 3.~~

27 *SEC. 4.* Section 13151 of the Probate Code is amended to
28 read:

29 13151. Exclusive of the property described in Section 13050,
30 if a decedent dies leaving real property in this state and the gross
31 value of the decedent’s real and personal property in this state
32 does not exceed two hundred thousand dollars (\$200,000) and 40
33 days have elapsed since the death of the decedent, the successor
34 of the decedent to an interest in a particular item of property that
35 is real property, without procuring letters of administration or
36 awaiting the probate of the will, may file a petition in the
37 superior court of the county in which the estate of the decedent
38 may be administered requesting a court order determining that
39 the petitioner has succeeded to that real property. A petition
40 under this chapter may include an additional request that the

1 court make an order determining that the petitioner has
2 succeeded to personal property described in the petition.

3 ~~SEC. 4.~~

4 *SEC. 5.* Section 13152 of the Probate Code is amended to
5 read:

6 13152. (a) The petition shall be verified by each petitioner,
7 shall contain a request that the court make an order under this
8 chapter determining that the property described in the petition is
9 property passing to the petitioner, and shall state all of the
10 following:

11 (1) The facts necessary to determine that the petition is filed in
12 the proper county.

13 (2) The gross value of the decedent's real and personal
14 property in this state, excluding the property described in Section
15 13050, as shown by the inventory and appraisal attached to the
16 petition, does not exceed two hundred thousand dollars
17 (\$200,000).

18 (3) A description of the particular item of real property in this
19 state which the petitioner alleges is property of the decedent
20 passing to the petitioner, and a description of the personal
21 property which the petitioner alleges is property of the decedent
22 passing to the petitioner if the requested order also is to include a
23 determination that the described personal property is property
24 passing to the petitioner.

25 (4) The facts upon which the petitioner bases the allegation
26 that the described property is property passing to the petitioner.

27 (5) Either of the following, as appropriate:

28 (A) A statement that no proceeding is being or has been
29 conducted in this state for administration of the decedent's estate.

30 (B) A statement that the decedent's personal representative has
31 consented in writing to use of the procedure provided by this
32 chapter.

33 (6) Whether estate proceedings for the decedent have been
34 commenced in any other jurisdiction and, if so, where those
35 proceedings are pending or were conducted.

36 (7) The name, age, address, and relation to the decedent of
37 each heir and devisee of the decedent, the names and addresses
38 of all persons named as executors of the will of the decedent,
39 and, if the petitioner is the trustee of a trust that is a devisee
40 under the will of the decedent, the names and addresses of all

1 persons interested in the trust, as determined in cases of future
2 interests pursuant to paragraph (1), (2), or (3) of subdivision (a)
3 of Section 15804, so far as known to any petitioner.

4 (8) The name and address of each person serving as guardian
5 or conservator of the estate of the decedent at the time of the
6 decedent's death, so far as known to any petitioner.

7 (b) There shall be attached to the petition an inventory and
8 appraisal in the form set forth in Section 8802 of the decedent's
9 real and personal property in this state, excluding the property
10 described in Section 13050. The appraisal shall be made by a
11 probate referee selected by the petitioner from those probate
12 referees appointed by the Controller under Section 400 to
13 appraise property in the county where the real property is located.
14 The appraisal shall be made as provided in Part 3 (commencing
15 with Section 8800) of Division 7. The petitioner may appraise the
16 assets which a personal representative could appraise under
17 Section 8901.

18 (c) If the petitioner bases his or her claim to the described
19 property upon the will of the decedent, a copy of the will shall be
20 attached to the petition.

21 (d) If the decedent's personal representative has consented to
22 use of the procedure provided by this chapter, a copy of the
23 consent shall be attached to the petition.

24 ~~SEC. 5.~~

25 *SEC. 6.* Section 13200 of the Probate Code is amended to
26 read:

27 13200. (a) No sooner than six months from the death of a
28 decedent, a person or persons claiming as successor of the
29 decedent to a particular item of property that is real property may
30 file in the superior court in the county in which the decedent was
31 domiciled at the time of death, or if the decedent was not
32 domiciled in this state at the time of death, then in any county in
33 which real property of the decedent is located, an affidavit in the
34 form prescribed by the Judicial Council pursuant to Section 1001
35 stating all of the following:

36 (1) The name of the decedent.

37 (2) The date and place of the decedent's death.

38 (3) A legal description of the real property and the interest of
39 the decedent therein.

1 (4) The name and address of each person serving as guardian
2 or conservator of the estate of the decedent at the time of the
3 decedent's death, so far as known to the affiant.

4 (5) "The gross value of all real property in the decedent's
5 estate located in California, as shown by the inventory and
6 appraisal attached to this affidavit, excluding the real property
7 described in Section 13050 of the California Probate Code, does
8 not exceed ~~forty one hundred thousand dollars~~ ~~(\$40,000)~~
9 *(\$100,000)*."

10 (6) "At least six months have elapsed since the death of the
11 decedent as shown in a certified copy of decedent's death
12 certificate attached to this affidavit."

13 (7) Either of the following, as appropriate:

14 (A) "No proceeding is now being or has been conducted in
15 California for administration of the decedent's estate."

16 (B) "The decedent's personal representative has consented in
17 writing to use of the procedure provided by this chapter."

18 (8) "Funeral expenses, expenses of last illness, and all
19 unsecured debts of the decedent have been paid."

20 (9) "The affiant is the successor of the decedent (as defined in
21 Section 13006 of the Probate Code) and to the decedent's interest
22 in the described property, and no other person has a superior
23 right to the interest of the decedent in the described property."

24 (10) "The affiant declares under penalty of perjury under the
25 law of the State of California that the foregoing is true and
26 correct."

27 (b) For each person executing the affidavit, the affidavit shall
28 contain a notary public's certificate of acknowledgment
29 identifying the person.

30 (c) There shall be attached to the affidavit an inventory and
31 appraisal of the decedent's real property in this state, excluding
32 the real property described in Section 13050. The inventory and
33 appraisal of the real property shall be made as provided in Part 3
34 (commencing with Section 8800) of Division 7. The appraisal
35 shall be made by a probate referee selected by the affiant from
36 those probate referees appointed by the Controller under Section
37 400 to appraise property in the county where the real property is
38 located.

1 (d) If the affiant claims under the decedent's will and no estate
2 proceeding is pending or has been conducted in California, a
3 copy of the will shall be attached to the affidavit.

4 (e) A certified copy of the decedent's death certificate shall be
5 attached to the affidavit. If the decedent's personal representative
6 has consented to the use of the procedure provided by this
7 chapter, a copy of the consent and of the personal
8 representative's letters shall be attached to the affidavit.

9 (f) The affiant shall mail a copy of the affidavit and
10 attachments to any person identified in paragraph (4) of
11 subdivision (a).

12 *SEC. 7. Section 13600 of the Probate Code is amended to*
13 *read:*

14 13600. (a) At any time after a husband or wife dies, the
15 surviving spouse or the guardian or conservator of the estate of
16 the surviving spouse may, without procuring letters of
17 administration or awaiting probate of the will, collect salary or
18 other compensation owed by an employer for personal services
19 of the deceased spouse, including compensation for unused
20 vacation, not in excess of ~~five~~ *fifteen* thousand dollars ~~(\$5,000)~~
21 *(\$15,000)* net.

22 (b) Not more than ~~five~~ *fifteen* thousand dollars ~~(\$5,000)~~
23 *(\$15,000)* net in the aggregate may be collected by or for the
24 surviving spouse under this chapter from all of the employers of
25 the decedent.

26 (c) For the purposes of this chapter, a guardian or conservator
27 of the estate of the surviving spouse may act on behalf of the
28 surviving spouse without authorization or approval of the court in
29 which the guardianship or conservatorship proceeding is
30 pending.

31 (d) The ~~five~~ *fifteen* thousand-dollar ~~(\$5,000)~~ *(\$15,000)* net
32 limitation set forth in subdivisions (a) and (b) does not apply to
33 the surviving spouse or the guardian or conservator of the estate
34 of the surviving spouse of a firefighter or peace officer described
35 in subdivision (a) of Section 22820 of the Government Code.

36 ~~(e) On January 1, 2003, and on January 1 of each year~~
37 ~~thereafter, the maximum net amount of salary or compensation~~
38 ~~payable under subdivisions (a) and (b) to the surviving spouse or~~
39 ~~the guardian or conservator of the estate of the surviving spouse~~
40 ~~may be adjusted to reflect any increase in the cost of living~~

1 occurring after January 1 of the immediately preceding year. The
2 United States city average of the “Consumer Price Index for all
3 Urban Consumers,” as published by the United States Bureau of
4 Labor Statistics, shall be used as the basis for determining the
5 changes in the cost of living. The cost-of-living increase shall
6 equal or exceed 1 percent before any adjustment is made. The net
7 amount payable may not be decreased as a result of the
8 cost-of-living adjustment.

9 *SEC. 8. Section 13601 of the Probate Code is amended to*
10 *read:*

11 13601. (a) To collect salary or other compensation under this
12 chapter, an affidavit or a declaration under penalty of perjury
13 under the laws of this state shall be furnished to the employer of
14 the deceased spouse stating all of the following:

15 (1) The name of the decedent.

16 (2) The date and place of the decedent’s death.

17 (3) Either of the following, as appropriate:

18 (A) “The affiant or declarant is the surviving spouse of the
19 decedent.”

20 (B) “The affiant or declarant is the guardian or conservator of
21 the estate of the surviving spouse of the decedent.”

22 (4) “The surviving spouse of the decedent is entitled to the
23 earnings of the decedent under the decedent’s will or by intestate
24 succession and no one else has a superior right to the earnings.”

25 (5) “No proceeding is now being or has been conducted in
26 California for administration of the decedent’s estate.”

27 (6) “Sections 13600 to 13605, inclusive, of the California
28 Probate Code require that the earnings of the decedent, including
29 compensation for unused vacation, not in excess of ~~five~~ *fifteen*
30 thousand dollars ~~(\$5,000)~~ *(\$15,000)* net, be paid promptly to the
31 affiant or declarant.”

32 (7) “Neither the surviving spouse, nor anyone acting on behalf
33 of the surviving spouse, has a pending request to collect
34 compensation owed by another employer for personal services of
35 the decedent under Sections 13600 to 13605, inclusive, of the
36 California Probate Code.”

37 (8) “Neither the surviving spouse, nor anyone acting on behalf
38 of the surviving spouse, has collected any compensation owed by
39 an employer for personal services of the decedent under Sections
40 13600 to 13605, inclusive, of the California Probate Code except

the sum of ____ dollars (\$____) which was collected from ____.”

(9) “The affiant or declarant requests that he or she be paid the salary or other compensation owed by you for personal services of the decedent, including compensation for unused vacation, not to exceed five thousand dollars (\$5,000) net, less the amount of ____ dollars (\$____) which was previously collected.”

(10) “The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”

(b) Reasonable proof of the identity of the surviving spouse shall be provided to the employer. If a guardian or conservator is acting for the surviving spouse, reasonable proof of the identity of the guardian or conservator shall also be provided to the employer. Proof of identity that is sufficient under Section 13104 is sufficient proof of identity for the purposes of this subdivision.

(c) If a person presenting the affidavit or declaration is a person claiming to be the guardian or conservator of the estate of the surviving spouse, the employer shall be provided with reasonable proof, satisfactory to the employer, of the appointment of the person to act as guardian or conservator of the estate of the surviving spouse.

SEC. 9. Section 13602 of the Probate Code is amended to read:

13602. If the requirements of Section 13600 are satisfied, the employer to whom the affidavit or declaration is presented shall promptly pay the earnings of the decedent, including compensation for unused vacation, not in excess of ~~five~~ *fifteen* thousand dollars ~~(\$5,000)~~ *(\$15,000)* net, to the person presenting the affidavit or declaration.

CORRECTIONS:

Heading-Lines 1 and 2.

Text-Pages 3 and 9.

O